

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 193 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME-TAX

Versus

SANDESH LIMITED

Appearance:

1. INCOME TAX REFERENCE No. 193 of 1993
MR MR BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 17/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the
revenue, the following questions have been referred for

our opinion for assessment year 1984-85:-

- (i) "Whether, the Tribunal is right in law and on facts in directing the ITO to allow deduction in respect of amount of Rs.77,144/- being the amount of outstanding liabilities towards sales tax, municipal tax, P.F., ESI, Labour welfare fund etc. ?
- (ii) Whether the Tribunal is right in law and on facts in holding that appeal is maintainable against IAC's failure to allow interest u/s.214 of the I.T. Act ?"

2. We have heard Mr MR Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

3. As far as the first question is concerned, our attention is invited to the decision of the Apex Court in Allied Motors (P) Ltd. vs. CIT (1997) 224 ITR 677. In view of the finding given by the Tribunal that the amounts of Rs.77,144/- were outstanding liabilities towards sales-tax, municipal tax, PF, ESI, Labour Welfare Fund etc. and that the said liabilities did not become due for payment before 30.6.1983 (the date of close of the accounting year) and that the said amounts were actually paid before the due dates prescribed under the respective laws, the principle laid down by the Apex Court in Allied Motors (P) Ltd. (supra) will squarely apply.

Accordingly, our answer to question No.1 is in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to question No.2, we find from the assessment order dated 24.10.1986 at Annexure "A" that the Assessing Officer computed the total taxable income at Rs.5,58,110/-, the tax payable thereon was Rs.3,44,334/- against which the advance tax paid and the tax deducted at source aggregated came to Rs.3,81,710/-, meaning thereby, the amount refundable was Rs.37,376/-. We find that since the assessee was entitled to be paid interest on the amount of refund for the period from 1.4.1984 till 24.10.1986 and thereafter till the date of payment of refund, the period would work out to about 30 months and, therefore, the assessee would be entitled to interest in the region of about Rs.12,000 to 13,000/-. While allowing the appeal by judgment dated 17.7.1990, the Tribunal directed the CIT (Appeals) to decide the

assessee's appeal wherein one of the grounds for challenge was to non-payment of interest under Section 214 and also to consider the judgment of this Court in Anup Engg. Ltd. vs. ITO, 145 ITR 105 cited by the assessee before the Tribunal. It would, therefore, appear that in all probability the CIT (Appeals) must have heard the matter and passed an appropriate order in 1991 or in 1992, meaning thereby, more than 12 years back.

5. In the facts and circumstances of the case, we are not inclined to consider question No.2 on merits for the following reasons:-

- (i) Looking to the amount of interest involved i.e. Rs.13,000/- and the fact that the interest must have been paid to the assessee, the assessee may have chosen not to appear in the appeal for defending such a small stake.
- (ii) The controversy is no longer live.
- (iii) We also cannot help noticing that the assessment order was passed on 24.10.1986 and the CIT (Appeals) passed the order on 18.2.1987. At that time the decision of the Karnataka High Court in CIT vs. Bharat Motors Service (decided on November 26, 1984) as reported in 163 ITR 843 was available and the said decision took the view that the appeal filed by the assessee before the Appellate Assistant Commissioner against the ITO's refusal to grant interest under Section 214 of the Act was a competent appeal filed under Section 246(c) of the Act. It can, therefore, be said that the assessee had bonafide carried the matter in appeal before the Tribunal. No useful purpose would be served by requiring the assessee at this stage to file the revision under Section 264 with an application for condonation of delay, when there is nothing in the assessment order to indicate why interest was not granted under Section 214 of the Act.

For the reasons aforesaid, we decline to answer question No.2.

Our answer to question No.1 is in the affirmative, that is, in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-